

REMARKS

In Section 10 of the Examiner's Answer (page 8), the argument is presented that Ozawa's first layer 220' is a "hard mask" because it performs the same function as a hard mask, regardless of what the film labeled. This argument is fallacious because the Answer seeks to incorporate some characteristics of a hard mask into Ozawa's first film, while ignoring other hard mask characteristics. It is well known in the art to pattern a hard mask and use the hard mask to protect an underlying film from etching. Ozawa's first film shares this characteristic with a hard mask. However, it is equally well known in the art that a hard mask is a temporary film that is removed once the etching process is completed. Ozawa's first film 220' does not share this characteristic with a conventional hard.

It should be noted that Ozawa also discloses a film that he specifically labels as a hard mask. Hard mask 612 is patterned, used for etching, and then removed. The Applicant submits that Ozawa was familiar with the conventional meaning of hard mask and purposely chose not to label first film 220' as a hard mask - because the first film does not perform the conventional function of a hard mask. That is, the first film 220' is not removed after pattern etching, as would a hard mask.

Ultimately, it is irrelevant what the first film 220' is labeled. Even though it is well understood in the art that a hard mask is removed at pattern etching, the Applicant amended the claims to avoid this very issue during prosecution. Claim 1 was amended to include the further limitation of "removing the hard mask". This limitation was added to avoid the Examiner's argument that the independent claims read upon the interpretation that Ozawa's first film 220' is a conventional hard

mask. That is, the limitation was added to avoid the interpretation that the Applicant's hard mask is a film that is left in place as part of the overall structure (as is Ozawa's first film 220').

The Examiner's Answer states that the phrase "removing the hard mask" can be broadly interpreted to recite the more limiting function of "*partially* removing the hard mask". Thus, the Examiner's interpretation is only possible if additional language is added to the claim. In the present circumstances, the Examiner is attempting to interpret the claims differently than actually written. That is, the Examiner's interpretation is only possible if the word "removing" is changed to the 2-word phrase "partially removing". This error is especially egregious since the alleged limitation (partially removing) is nowhere evident in the Applicant's specification or drawings.

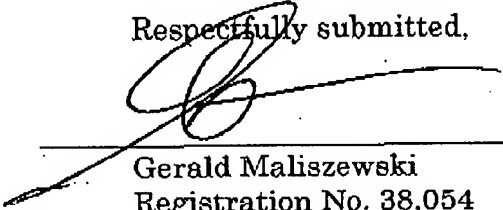
It is illogical to assume an interpretation to a claim based upon language that is not recited in the claim. Very few patent applications would survive to issue if an Examiner were permitted to arbitrarily add words to a claim to support a rejection. The Applicant agrees that the claims should be interpreted as broadly as possible, but only using the language actually found in the claims.

It is submitted that for the reasons pointed out above, the claims in the present application clearly and patentably distinguish over the cited references. Accordingly, the Examiner should be reversed and ordered to pass the case to issue.

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